

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

UNITED STATES OF AMERICA,	:	
	:	
vs.	:	DOCKET NUMBER
	:	1:17-CR-0224-AT-1
ALLEN J. PENDERGRASS,	:	
	:	ATLANTA, GEORGIA
DEFENDANT.	:	JULY 1, 2019

**TRANSCRIPT OF AUDIO-RECORDED PRETRIAL CONFERENCE PROCEEDINGS**

**BEFORE THE HONORABLE CATHERINE M. SALINAS**

**UNITED STATES MAGISTRATE JUDGE**

APPEARANCES OF COUNSEL:

**FOR THE GOVERNMENT:**

JEFFREY BROWN  
UNITED STATES ATTORNEY'S OFFICE

**FOR THE DEFENDANT (VIA TELEPHONE):**

SARALIENE DURRETT  
SARALIENE SMITH DURRETT, LLC

***MECHANICAL STENOGRAPHY OF PROCEEDINGS AND COMPUTER-AIDED  
TRANSCRIPT PRODUCED BY:***

<b>OFFICIAL COURT REPORTER:</b>	<b>SHANNON R. WELCH, RMR, CRR</b>
	<b>2394 UNITED STATES COURTHOUSE</b>
	<b>75 TED TURNER DRIVE, SOUTHWEST</b>
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**P R O C E E D I N G S**

**(Atlanta, Fulton County, Georgia; July 1, 2019.)**

THE COURT: Okay. This is Case Number 1:17-CR-224. United States v. Allen Pendergrass. Jeff Davis is here, and Saraliene Durrett is on the phone.

MR. BROWN: It is Jeff Brown.

THE COURT: Oh, sorry.

MR. BROWN: We're like brothers.

THE COURT: Yeah. Sorry.

MR. BROWN: No problem.

THE COURT: Has it always been him?

MR. BROWN: It has. It has always been him.

THE COURT: Jeff Davis just reminds me of like the Civil War.

MR. BROWN: Yes.

THE COURT: You know, that whole thing?

MR. BROWN: Right.

THE COURT: So you're not that. You're not that Jeff Davis.

Sorry.

COURTROOM DEPUTY CLERK: Teresa is on the docket too. I didn't think you were, but --

MR. BROWN: Teresa is on the docket.

THE COURT: Okay. So is there anything we need to do?

1 I know there is a motion that I've got to deal with,  
2 the pre-indictment motion to dismiss.

3 MS. DURRETT: Yes.

4 And, Your Honor, I have -- we've requested copies of  
5 Mr. Pendergrass's hard drives from the Government. I think  
6 when they did the initial arrest of Mr. Pendergrass they seized  
7 about ten computers. And they still have those computers.

8 And we have requested copies of some of the hard  
9 drives because they have relevant financial documents on them.  
10 And Mr. Brown provided those copies to us. But they are not in  
11 a format that we can read for whatever technical reason that  
12 is.

13 And I have requested money from the Court to hire Jim  
14 Persinger to produce them in a technical format that we can  
15 read. But I'm waiting on the Court's approval for that. So  
16 that is kind of the status of where we are as far as the  
17 financial documents that we have requested.

18 But, you know, until I see them, I'm not sure, you  
19 know, how they will help us in this process or if they will  
20 help us in this process. But my client believes they are  
21 relevant to his defense.

22 THE COURT: I think I approved that. It is very --  
23 it is very possible that I didn't. Like I feel like I'm good  
24 at my job. The one thing that I'm not very good at is dealing  
25 with the CJA system. And the -- and I forget that I've got

1 things pending.

2 But I feel like that one I already ruled on. Do you  
3 get notice when I approve them? I don't think you do.

4 MS. DURRETT: I don't get notice. But I looked this  
5 morning. And I can see -- all I can ever see is if it has been  
6 submitted or approved. And what it showed me was that it had  
7 been submitted.

8 So maybe I just need to check with Michaela and say  
9 does this mean approved because --

10 THE COURT: Well, I just have a vague recollection of  
11 it and --

12 MS. DURRETT: Okay.

13 THE COURT: -- thinking do I need to think hard about  
14 this or should I just approve it? And I think I just approved  
15 it. So I will --

16 MS. DURRETT: Okay.

17 THE COURT: If I haven't approved it yet, I'll go  
18 ahead and approve it.

19 So does that mean you need more time to review that?

20 MS. DURRETT: It does. Jim Persinger has the drive.  
21 But he doesn't have permission to do anything with it until we  
22 get the money -- until -- as soon as I tell him it is a go, he  
23 will start working on it.

24 But yes, I need more time because I can't read the  
25 files right now.

1 THE COURT: All right. And you think there is going  
2 to be evidence that helps your case on the computer?

3 MS. DURRETT: All I know is that they are supposedly  
4 financial documents that were seized at the time of his arrest.  
5 And that is all I know about them. But my client feels like  
6 there will be information in there that we need to look at.

7 THE COURT: Well, that's probably true. But whether  
8 or not it is helpful to your case, I don't know.

9 MS. DURRETT: I don't know the answer to that, Your  
10 Honor. I just haven't seen it. And I don't know.

11 THE COURT: Because, you know, if it is not going to  
12 be helpful to your case, I don't know that it makes sense to  
13 delay it any further.

14 MS. DURRETT: Well, the only thing I can say is, if  
15 it is helpful, it probably weighs on this prejudice idea --  
16 right? -- about whether he has been prejudiced.

17 I did note in one of my filings -- I don't remember  
18 if it was the response. I think it was -- that Mr. Pendergrass  
19 had been represented by an attorney in another district. And  
20 when that was happening, that attorney wrote to the officer who  
21 was kind of heading up this investigation in all districts,  
22 including the Georgia state court and federal court and  
23 other -- you know, the Ohio court. His attorney wrote to that  
24 officer, Officer Ricks, and said I want to get access to those  
25 computers. My client wants access to those computers.

1           And you can see in the emails that I attached to one  
2 of my filings Officer Ricks told the other officers, I just  
3 ignored that. His attorney wrote to me, and I just ignored  
4 that.

5           So at least I know someone was trying to get it to  
6 help Mr. Pendergrass at some point. That attorney, who I have  
7 contacted several times -- he was out of the country for  
8 several months. But I have been in contact with him -- told me  
9 that he never got access to those computers.

10           So there is something going on there. And I think if  
11 the Court is going to be weighing whether Mr. Pendergrass was  
12 prejudiced by the delay here the denial of access to those  
13 computers is going to be part of it. And I don't know how  
14 prejudiced he was or if he was prejudiced until I see what is  
15 on there.

16           THE COURT: All right. Mr. Brown, what do you -- I  
17 mean, do you have a problem with giving her more time to look  
18 at this computer?

19           MR. BROWN: I mean, I don't have any problem with  
20 that, Judge. It is just the Government has done what we're  
21 supposed to do in turning this -- making this stuff available  
22 to her.

23           So I mean, I think what is also before the Court is  
24 just ruling on the motion to dismiss for a pre-indictment  
25 delay.

1 THE COURT: Right. And that is something I can go  
2 ahead and start working on like -- frankly, I haven't started  
3 working on it. But I will now. It is kind of -- it is on my  
4 radar now. So I can go ahead and just start working on my R&R  
5 for that.

6 We'll -- I'll go ahead and approve the funds. And  
7 let's just start with 30 days. We'll give you 30 days to file  
8 any additional motions that you have. And we'll set up a  
9 pretrial conference.

10 MS. DURRETT: Okay. Your Honor, I'll just say we  
11 requested a hearing in relationship to that motion that you're  
12 talking about. So if the Court is not going to hold a hearing  
13 on that, I would object to that. Because I think there are  
14 facts -- that we provided documents to the Court showing these  
15 emails back and forth between the U.S. Postal Inspector Service  
16 and the Fulton County District Attorney's Office talking about  
17 AUSA Jeff Brown and bringing him in on this.

18 So we've shown that there has been some discussion  
19 between these groups about the prosecution in this case. We  
20 provided a document showing that when there was an arrest and  
21 search of Mr. Pendergrass's office that it was a joint  
22 operation between APD and the U.S. Postal Service who is  
23 working -- and in the report, it says they want this to be a  
24 federal case, a federal investigation. And it names all the  
25 different jurisdictions that they think are involved.

1           So we think there is in evidence the record of some  
2 sort of working together between all these parties to determine  
3 how they wanted to prosecute this to maybe get the most  
4 advantage over Mr. Pendergrass that they could get. And I  
5 think that's what the motion is talking about is whether or not  
6 there was some sort of effort made by APD, U.S. Postal Service,  
7 U.S. Attorney's Office to delay this process out and make sure  
8 that Mr. Pendergrass was prosecuted in multiple jurisdictions  
9 and to make sure there continued to be a hold on him from  
10 Fulton County, which there was.

11           Mr. Pendergrass's counsel -- he was sentenced in Ohio  
12 for related activity. When he was sentenced in that case and  
13 he got to Jesup to serve his time, his counsel wrote to Fulton  
14 County and said, hey, we see you have this hold on him. What  
15 is happening with this case? The case has never been resolved  
16 even though they are way out of time in statute of limitations  
17 for the state case.

18           But that case remained open and kept a hold on  
19 Mr. Pendergrass while he was serving in another district so  
20 that he could not be released to a halfway house or anything  
21 else. It ensured that he came back to Georgia on the  
22 federal -- finally when the feds decided to do something, it  
23 ensured that he was still in custody and brought back to  
24 Georgia in custody.

25           So I think we've provided information showing that we



1 think there should at least be a hearing on this matter, that  
2 it shouldn't be summarily dismissed. Unless the Court is going  
3 to say yes, we agree, it does sound like there was some  
4 business going on to make sure that this was delayed as long as  
5 possible to ensure that he was prosecuted in multiple districts  
6 and that he was prejudiced by it, then -- you know, then we  
7 wouldn't have an objection.

8 But if the Court is inclined to say, well, I don't  
9 see a problem with this delay or with the prejudice, then I  
10 object to that. Because I think we need a hearing on it.

11 THE COURT: Okay. When I look -- I mean, I have  
12 glanced at it. And I have seen that -- you know, I kind of  
13 understand the facts as you present them and then the question  
14 is is that -- you know, is that the Government's prerogative to  
15 do it that way.

16 But I'll look at it. And I'll either, you know,  
17 decide that we need a hearing on it and set that up or I'll do  
18 an R&R one way or the other on that.

19 But in terms of other motions that you might want to  
20 file, we'll give you 30 days. If you need more time, you can  
21 always just let me know. But I mean, y'all are the ones  
22 talking about speedy trial. So at this point, it has been a  
23 long time.

24 MS. DURRETT: Right.

25 THE COURT: That is not your fault, and it is not Mr.

1 Pendergrass's fault. So I don't mean to say it that way. But  
2 there are concerns about speedy trial. So it has been going on  
3 a long time.

4 So let's just say -- let's try for 30 days and see if  
5 you can get into the computer. I'll go right now and approve  
6 it, if I haven't already done that.

7 And I mean, did you ask for a reasonable amount?  
8 Yes, I'm sure you did.

9 MS. DURRETT: I think it is reasonable. Persinger  
10 told me that is what he always asks for.

11 THE COURT: Okay. So I'll do that. Then let's just  
12 set up another conference.

13 Angela, what is a good day for us?

14 COURTROOM DEPUTY CLERK: So 30 days for filing  
15 motions will be August 1st.

16 THE COURT: August 1st --

17 COURTROOM DEPUTY CLERK: -- is motions.

18 THE COURT: -- for motions. And that doesn't mean  
19 you have to file any motions. It is just the day that will be  
20 the deadline if you choose to file a motion.

21 MS. DURRETT: Okay.

22 COURTROOM DEPUTY CLERK: What about August 7th at  
23 9:30?

24 THE COURT: Can you do August 7 at 9:30?

25 MS. DURRETT: Yes.

1 MR. BROWN: Is that Monday or Tuesday?

2 COURTROOM DEPUTY CLERK: It is a Wednesday.

3 MR. BROWN: It is a Wednesday. That should be fine.

4 THE COURT: And, you know, I really don't mind doing  
5 -- having you come by phone, especially if it is just kind of  
6 scheduling issues.

7 If you want to be here, I think -- if you want to  
8 argue something, you probably want to come in person. I think  
9 it is stronger. But just for stuff like this, I think being on  
10 the phone is fine. So we'll just plan for that.

11 And that goes for the Government also. I know it is  
12 a little bit easier for you to get here.

13 We'll have that deadline of August 1st for motions;  
14 August 7 for our pretrial conference. And in the meantime, I  
15 will just take the motion to dismiss under advisement.

16 MS. DURRETT: Thank you.

17 THE COURT: Is there anything else we need to brief  
18 up? I think that is it; right?

19 MR. BROWN: No. That is it, Judge.

20 THE COURT: Okay. All right. Anything else,  
21 Ms. Durrett?

22 MS. DURRETT: No. Thank you, Your Honor.

23 THE COURT: Okay. Thank you for -- I appreciate you  
24 taking on this case, and I know that you came into it late, and  
25 you came actually at my recommendation. So I appreciate it.

1 MS. DURRETT: Thank you, Your Honor. I appreciate  
2 it.

3 THE COURT: Okay. We'll be in recess.

4 **(The audio-recorded proceedings were thereby**  
5 **concluded at 2:14 P.M.)**

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## C E R T I F I C A T E

UNITED STATES OF AMERICA

NORTHERN DISTRICT OF GEORGIA

I, SHANNON R. WELCH, RMR, CRR, Official Court Reporter of the United States District Court, for the Northern District of Georgia, Atlanta Division, do hereby certify that the foregoing 12 pages constitute a true transcript of proceedings had before the said Court, held in the City of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 28th day of October, 2022.

*Shannon R. Welch*

SHANNON R. WELCH, RMR, CRR  
OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT  
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